

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In the Matter of)
)
An Industry Coordination Committee)
System for Broadcast Digital)
Television Service)

ET Docket No. 99-34

To: The Commission

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**REPLY COMMENTS OF
THE ASSOCIATION FOR MAXIMUM SERVICE TELEVISION, INC. AND
THE NATIONAL ASSOCIATION OF BROADCASTERS**

The Association for Maximum Service Television, Inc. ("MSTV") and the National Association of Broadcasters ("NAB") file these reply comments to the Notice of Proposed Rule Making ("Notice")¹ in the above-captioned proceeding. We again express support for the establishment of an industry coordination committee to assist in the implementation of the digital television ("DTV") service and comment on several concerns raised in the initial round of comments.

There were about one dozen sets of comments filed in response to the *Notice*. With a few exceptions, these comments appreciated the value of having DTV coordinating committees assess DTV allotment/assignment changes and other purely technical DTV implementation matters, provided that such committees are open to interested parties, operate in a transparent manner using a publicly available data base and methodology, do not make decisions in lieu of the Commission, have limited authority, and make their processes and

¹ *An Industry Coordination Committee System for Broadcast Digital Television Service*, Notice of Proposed Rule Making, ET Docket No. 99-34 (adopted Jan. 28, 1999).

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decisions open to the public.² We agree with these conditions and, in our initial comments, offered some ideas about how the committees might balance openness and accessibility, on the one hand, with effectiveness and timeliness, on the other.

We take this opportunity to respond to particular concerns raised in the comments on the need for coordinating committees as well as their composition and operation.

FCC Authority.

Several consulting engineers suggest that coordinating committees could undermine the FCC's control of the DTV application process and could displace consulting engineers, that such committees are unnecessary, and that the Commission should focus on resolving outstanding license processing issues.³ The coordinating committees, as envisioned in our initial comments and previous filings, would have no authority to make decisions or binding recommendations about DTV allotments/assignments or any other DTV implementation issue. To the contrary, use of the committees would be wholly voluntary and the Commission would retain the authority to disregard the committees' recommendations or certifications of specific proposals.

The Role of Consulting Engineers.

The committees, as envisioned in the *Notice*, would not do the work of consulting engineers. The effort that goes into filing a non-checklist DTV application is heavy and technically demanding. As the transition progresses and more facilities are authorized, the

² See, e.g., Comments of the Association of America's Public Television Stations and Public Broadcasting Service ("APTS/PBS"), the Association of Local Television Stations, Inc. (not supporting committees, but suggesting "bedrock principles" for their operation) ("ALTV"), the Association of Public-Safety Communications Officials-International, Inc. ("APCO"), the Community Broadcasters Association, the Consumer Electronics Manufacturers Association, Fox Television Stations, Inc. ("Fox"), filed in *An Industry Coordination Committee System for Broadcast Digital Television Service*, Notice of Proposed Rule Making, ET Docket No. 99-34 (March 29, 1999).

³ See, e.g., Comments of Lohnes and Culver and Donald Everist.

process of applying for modified facilities will become ever more onerous. Nothing in the *Notice* suggests that the Commission intends to reduce the technical showings that licensees must make when filing *de minimis*, maximization or other non-checklist applications. As broadcasters engaged in the process know, it takes weeks and thousands of dollars to produce the necessary engineering exhibits. Neither the Commission nor any commenter anticipates that the coordinating committees would do this work. Instead, the committees would simply analyze the proposals, undoubtedly accompanied by engineering studies that consulting engineers would prepare, to check compliance with the FCC rules. Committee certification would in no way substitute for a technical showing by the licensee sufficient to allow Commission staff (or other parties) to make an independent determination about compliance.

Maintenance of FCC Database and Processing Clarity.

Notwithstanding its issuance of processing guidelines over the past year, the Commission has still not answered certain questions about how DTV applications should be filed and how they will be processed. For example, it is unclear how mutually exclusive applications for the same *de minimis* interference allowance will be handled. It is also unclear exactly what the technical showing must be for stations seeking to maximize up to 1000 kW. The comments to the *Notice* list other outstanding questions and suggest certain Commission action (*e.g.*, consolidating NTSC and DTV databases, defining non-directional and directional antennae, and determining whether updated census information may be introduced).⁴ The Commission should certainly address these requests for clarification as quickly as possible to make the filing and processing of DTV applications easier and to minimize interference. But clarification of these rules is no substitute for coordinating committees. However clear the rules are, licensees will

⁴ See Comments of Donald Everist at 2-8.

still file applications that are mutually exclusive (perhaps unnecessarily so) and technically inconsistent. Industry coordinators could use the Commission's database – whether consolidated or not – and the Commission's rules – whether fully elaborated or not – to help licensees submit applications that maximize service for all.

Eligibility to Serve on Committees.

We urged in initial comments that coordinating committee members be required to have the requisite technical expertise to analyze proposed DTV allotments/assignments using the FCC's methodology. We agree with the Fox Stations that candidates should have experience in the field of terrestrial RF propagation and should run the Commission's allotment/assignment software.⁵ However, we disagree with the Fox Stations' suggestion that candidates that have some relationship (*e.g.*, a previous consultancy) with a broadcast station should be excluded from consideration. Almost all candidates who have the technical expertise to analyze proposed DTV allotment/assignment changes have consulted with stations in the past. A blanket exclusion of these candidates from the coordinating committees would render the committees less reliable and therefore less useful. Unquestionably, the committees should be objective and the public should have assurance that they are. The Commission might consider excluding candidates who are closely tied to a particular organization or broadcast station (rather than those that have merely had some connection). The Commission should also consider requiring the coordinator to note in the certification form whether s/he has ever worked or consulted for any of the licensees (including licensees that are commonly owned) affected by the proposed change.

Just as excluding too many candidates from consideration would undermine the technical integrity of the coordination process, including too many would do the same. We

⁵ See Comments of the Fox Stations at 6.

disagree with APTS/PBS that the eligibility criteria proposed in the *Notice* are too stringent.⁶ If candidates cannot manipulate the engineering database and implement the relevant FCC software and methodology, they simply cannot provide reliable assistance to licensees trying to determine the viability of their allotment/assignment proposals. There is no point in having coordinating committees if they are not staffed by individuals with superior qualifications.

Operation of Committees.

As we stated in initial comments, it is of utmost importance to the efficacy and fairness of the coordination process that the coordinating committees operate in an open and uniform fashion no matter who the licensee and what the proposal. We oppose suggestions that certain types of licensees be exempted from paying fees to the coordinators.⁷ If coordination fees are cost-based and use of the coordination services is voluntary, all licensees that use the coordination services should be able to pay for them. Exemption from the fees would leave the coordination process financially short-changed. We also oppose the suggestion that certain parties (*i.e.*, land mobile interests) have veto power over the committees' recommendations or the Commission's adoption of changes to the DTV Table.⁸ Just as access to the coordination process should be party-neutral, operation of that process should be subject to FCC rules without weight being given to any particular interest.

Pointing to frequency coordination in the private land mobile service, the Fox Stations and ALTV recommend the creation of competing DTV coordination committees rather than a single national committee or network of regional committees.⁹ At the same time, these commenters recognize that it could be difficult to hold competing coordinating committees to

⁶ See Comments of APTS/PBS at 6.

⁷ See Comments of APTS/PBS at 10, Community Broadcasters Association at 2.

⁸ See Comments of APCO at 4 (urging the Commission not to approve any new allotments on channels 14-21 without a favorable recommendation from all the relevant land mobile coordinators).

uniformly high standards and that such committees would be susceptible to forum shopping.¹⁰ A disparate group of committees may be subject to too many liabilities and produce too few benefits. Unlike in the private land mobile services, use of DTV coordinating committees would be wholly voluntary. The committees would not present a bottleneck to would-be licensees trying to get on the air. Therefore, whatever speed and efficiency gains one might expect from competition would not be worth the potential loss of quality control, consistency, and fairness a single coordination process would provide. The structure that we proposed in initial comments would permit all interested industries to participate in the operation of a disinterested coordination process. By contrast, a system of competing coordinating committees would inevitably tend toward partiality because any given committee could be subject to the direction of one interest, rather than a collection of all interests. Groups with particular agendas (*e.g.*, in seeing that certain licensees gain more power, in reducing television-land mobile interference protections, in short-spacing low power television stations) could sponsor coordinating committees to effectuate their goals rather than simply to assess proposals according to the rules.

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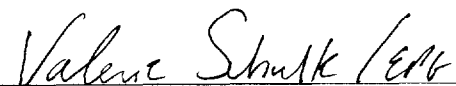
⁹ See Comments of ALTV at 4-5, the Fox Stations at 2-5.

¹⁰ See *id.*

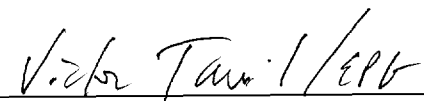
For the foregoing reasons, MSTV and NAB urge the Commission to facilitate the formation of a single neutral and open industry coordinating committee system to assist licensees and the Commission in making changes to the DTV Table and managing certain other technical details of the DTV transition.

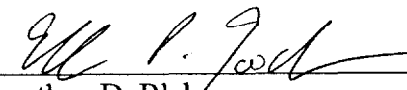
Respectfully submitted,

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